

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

The Hon'ble **JUSTICE SUVRA GHOSH**

W.P.A. 19050 of 2019

**Aloka Mukherjee & Ors.
Vs.
The State of West Bengal & Ors.**

For the Petitioners: Mr. Amit Kumar Pan, Adv.
Mr. M.M. Roy, Adv.
Ms. T. Santra, Adv.,

For the State: Mr. Susovan Sengupta, Adv.
Mr. Manas Kumar Sadhu, Adv.,

For the NHAI: Ms. Monika Roy, Adv.,

Hearing Concluded on: 14.12.2022

Date: 11.01.2023

SUVRA GHOSH, J. :-

1. The writ petitioners have assailed the order passed by the Special Land Acquisition Officer, Burdwan on 16th July, 2009 rejecting the representation submitted by the petitioners before the authority.
2. The petitioners claim to be recorded owners of the plots in question having one third share therein along with the proforma respondent and submit

that though land measuring about 84.19 acres in the plots in question was utilised by the State respondents for the purpose of construction of fly over communicating NH-2 and G.T. Road sometime in the year 1979, no compensation has been paid to the petitioners despite several requests made by them.

3. The petitioners claim compensation in terms of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 by setting aside the order impugned passed on 16th July, 2009.
4. It is submitted on behalf of the petitioners that portions of the plots in question including surface and sub-soil rights were vested in the State under sections 4/5 of the West Bengal Estates Acquisition Act, 1953 as well as in terms of section 29 of the Act vide notification published on 4th November, 1954. The record of rights issued in favour of the predecessors of the petitioners suggests that their names were recorded in respect of the plots in question under the West Bengal Estates Acquisition Act subsequent to vesting, thereby suggesting that the plots were allowed to be retained by them. The recordings in the record of rights have already been acknowledged in the preliminary enquiry report on North Muslia Colliery given by the Assistant Settlement Officer, Asansol.
5. In L.A. cases initiated by the State respondents in 1963-64, 1965-66, 1970-71 for acquisition of portions of the plots owned by the predecessors of the petitioners, compensation was paid to the predecessors upon

completion of the proceedings, the entire exercise being done after the notification of 1954. The fly over appears to have been constructed on the portion of land owned by the petitioners by a notification issued under section 3(1) of the West Bengal (Requisition and Acquisition) Act, 1948 on 25th July, 1974. The plots in question were requisitioned by the Government and subsequently utilised for construction of the fly over. This suggests that though the sub-soil right of the plots in question was vested in the State, the petitioners/their predecessors continued to have right, title and interest in respect of the surface land.

6. The order impugned is silent regarding the record of rights published in the names of the petitioners/their predecessors and retention of portions of the plots by them. There is no whisper in the said order as to under what provision of law notice under the Act of 1948 was issued despite the respondents claiming the plots to have vested in the State earlier. Since it is evident that the fly over has been constructed on the plots owned by the petitioners, it is incumbent upon the State respondents to consider the case of the petitioners and determine and pay compensation to them for the same.
7. Per contra, learned counsel for the respondents has submitted that the plots in question comprised in North Muslia Colliery including sub-soil rights therein held by the predecessors-in-interest of the petitioners and proforma respondent vested in the State free from all encumbrances under section 5 of the West Bengal Estates Acquisition Act, 1953. The said predecessors became direct tenants under the State Government from the

date of vesting in terms of section 29 of the Act of 1953. The predecessor-in-interest of the petitioners was granted mining lease in respect of the plots in question which were part and parcel of the surface area held by the North Muslia Colliery, the lease being terminated by the Government and possession of the land taken over by an order passed on 16th November 2005. The entire land having been resumed by the State in terms of the Act of 1953, the petitioners cannot be said to be in possession of the surface area of the land. The petitioners are, therefore, entitled to take appropriate steps for compensation under the Act of 1953 and not under the Land Acquisition Act, 1894.

8. Heard learned counsels for the parties.
9. It is not in dispute that the sub-soil rights of the plots in question have been resumed by the State respondents. The bone of contention between the parties is with regard to the surface rights, the petitioners claiming to be owners thereof and the respondents urging that such rights have been resumed by the State under the 1953 Act. In explaining issuance of notice under section 3(1) of the Act of 1948 of 25th July 1974, learned counsel for the respondents has submitted that such notice can be issued in the event of encumbrance upon land vested in the Government. Learned counsel has placed reliance on the authority in *Saraswati Devi (Dead) By LR v/s. Delhi Development Authority and others* reported in (2013) 3 Supreme Court Cases 571 in support of his contention. The order issued on 16th November, 2005 demonstrates that the lease in respect of the plots in

question including subsoil rights was terminated and possession of the same was taken over by the State.

10. In an earlier writ petition being W.P. No. 8199 (W) of 2004, filed by the petitioners, a Coordinate Bench of this Court, by an order passed on 15th December, 2008, granted liberty to the petitioners to submit a fresh representation before the concerned authority and directed the authority to consider the same in its proper perspective and in the light of the observation made in the order. Pursuant to the said order, fresh representation was submitted by the petitioners and was disposed of by the order impugned.

11. The order impugned demonstrates that the record of rights published in favour of the petitioners was perused by the authority but there is no reflection in the order as to the manner of consideration of the same or whether the documents were considered at all. The order is also bereft of any finding with regard to issuance of notice upon the petitioners under section 3(1) of the Act of 1948 much after the alleged vesting. The order gives a detailed account of the written statement submitted by the Revenue Officer of the office of the Sub Divisional Land and Land Reforms Officer, Asansol and is in fact the reflection of the said report. The case made out by the petitioners has not been dealt with by the authority by a speaking order and the order rests solely on the anvil of the report of the Revenue Officer. The directions of the Coordinate Bench have also not been adhered to in the said order.

12. Since the petitioners claim to be owners of the plots in question on which the fly over has been constructed and rely on several documents in support of their claim and also as according to the petitioners, other owners similarly circumstanced with the petitioners have already been granted compensation, the authority ought to have taken such facts into consideration and dealt with the contention of the petitioners by a speaking and reasoned order. The impugned order lacking the same, is required to be set aside. The authority needs to revisit the case upon considering all relevant documents and submission made by both the parties before it and pass a speaking and reasoned order within a stipulated time frame. The authority ought not to have held that the petitioners have no case related to acquisition of land under the Land Acquisition Act, 1894 without assigning reasons therefor.
13. Accordingly the writ petitions being W.P.A. No. 19050 of 2019 is allowed.
14. The order impugned passed by the Land Acquisition Officer, Burdwan on 16th July, 2009 is set aside.
15. The Special Land Acquisition, Burdwan, being the 6th respondent herein, is directed to revisit the case of the petitioners as made out in the representation submitted by them and pass a reasoned and speaking order within 8 weeks from the date of communication of this judgment, upon affording reasonable opportunity of hearing to all the interested persons including the petitioners, in accordance with law in the light of the

observation made in this judgment as well as the order of the Coordinate Bench in W.P. No. 8199 (W) of 2004 dated 15th December, 2008.

16. The decision taken by the authority shall be communicated to the petitioners within a week thereof.

17. There shall however no order as to costs.

18. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)